IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1149 OF 2005
WITH
CIVIL APPLICATION NO.1420 OF 2005
WITH
APPEAL FROM ORDER NO.1151 OF 2005
WITH
CIVIL APPLICATION NO.1422 OF 2005

Susheela R.Kulal & Ors.. ..Appellants.

V/s.

Madhukar Moolya & Anr. ..Respondents.

Mr.Malgaonkar for appellants.

Mr.Suresh Gole for Respondents.

CORAM: A.M.KHANWILKAR,J

DATE : JANUARY 31, 2006.

P.C. :

1. Heard counsel for the parties.

2. I find no reason to depart from the opinion recorded by the court below, in view of the evidence on record in particular deposition of Jatin Khurana. It is not possible to take a view that there has been breach of order dated 24th December, 2004 in any manner. It has now come on record that Jatin Khurana is an employee of the defendant and not occupant of the disputed premises in any other capacity. In that sense, no third party rights or interest has been

created in the suit premises so as to take the view that the defendant had committed any breach of order dated 24th December, 2004. Hence this appeal should fail.

3. Counsel for the appellants submits that the court below has committed error in granting further time to the respondents to deposit Rs.10,000/- per month with effect from February, 2005 as directed on 13th June, 2005. That is not the basis on which breach of order dated 24th December, 2004 was alleged, which is the only issue that will have to be considered in the present proceedings. Hence, dismissed.

4. It is made clear that the trial court shall decide the main proceedings on its own merits in accordance with the law uninfluenced by any observations made in the impugned order.

5. Counsel for the respondents brought to my notice that the respondents have already questioned the correctness of the directions given by the court below to pay the sum of Rs.10,000/-. That is not the issue in the present proceedings. Hence, appeal as well as civil application dismissed.